

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 24-10-1996.

SPECIAL CIVIL APPLICATION No. 1943 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

V X L INDIA LTD.

Versus

STATE OF GUJARAT & OTHERS

Appearance:

Mr.S.B. Vakil, Advocate for the petitioner.

Ms. Parmar, A.G.P. for the Respondent No.1.

SERVED for Respondent No. 2, 3

CORAM : H.R.SHELAT, J.

24/10/96

ORAL JUDGEMENT

The petitioner, by this petition, calls in question the order dated 28th February 1984 passed by the Industries Commissioner as well as the order dated 31st July 1984 passed by the State of Gujarat whereby its prayer for granting exemption came to be refused.

2. Briefly stated, the case of the petitioner is that it

carries on the business of manufacturing woollen materials at Jamnagar. The company gradually prospered and expansion of the company was found necessary. In the year 1975 the Central Government decided to allow additional capacity so as to raise the export capacity, as a result the company was permitted to install additional 1200 worsted spindles and 20 powerlooms. Thereafter on 17th February 1976, the Urban Land Ceiling Act (for short 'the Act') came into force. The petitioner at that time was in all holding 130766 sq.meters of land bearing old Revenue Nos. 150 & 151. In that land there was construction and about 34895.69 sq.meters of land was covered by the construction. There was open land admeasuring 13520 sq.meters, out of which 21831 sq.mts. of land was to be used for the proposed construction. On 4th September 1976 the petitioner filed an application under Section 20(1) of the Act for getting necessary exemption. On 6th September 1976 as required under Section 6(1) of the Act necessary form was filled up. The case of the petitioner was initially placed before the Committee appointed by the Government. After due deliberation the Committee recommended to grant exemption of the land excluding the land covered by the unauthorised construction. The Committee did not give any opportunity of being heard. Thereafter the Industries Commissioner passed the order on 28th February 1984 without hearing the petitioner. The Commissioner did not grant exemption of the land admeasuring 11683 sq.meters inspite of the fact that he accepted the recommendation of the Committee. He did not grant exemption on the ground that there was unauthorised construction which could not be encouraged. The petitioner therefore submitted the application dated 3rd May 1984 to the Government of Gujarat for reviewing the order of the Industries Commissioner. The Government of Gujarat also did not grant the opportunity to submit and informed the petitioner that nothing was required to be done in the matter as the Industries Commissioner's order was just and proper. The petitioner then sent his representation dated 28th August 1984 to the Industries Commissioner for reviewing or reconsidering the order dated 28th February 1984 with a request to give a personal hearing, but petitioner's request was turned down and therefore the present petition is filed.

3. It is the cardinal principle of law that even if the administrative order is to be passed, the rules of natural justice must be esteemed and adhered to and opportunity to submit should be given to the person who is interested or against whom the order is to be passed. If the order is passed without affording any opportunity to submit, it would be the order bad in law right from its inception and will have to be quashed. Such order cannot be allowed to be maintained. In the case on hand, it is the submission of the

petitioner that the Industries Commissioner and later on the Government of Gujarat did not give the opportunity to submit its case and the order came to be passed on the basis of the recommendation of the Committee. The petitioner has thus as alleged condemned unheard. On behalf of the Government, the learned A.G.P., though laboured much, could not point out on record anything indicating that the opportunity to submit was given to the petitioner. It is pertinent to note that the copies of the impugned order are produced at Annexures 'A' & 'B'. In those orders also nothing has been mentioned about the personal hearing if at all given. It can, therefore, be assumed that in this case, without giving the opportunity to submit, the orders came to be passed and the petitioner is condemned unheard. The rule of natural justice is set at naught. Consequently, the orders which are passed are void ab initio, the same are required to be quashed.

4. Under the Act while computing about the ceiling limit the authority has to bear in mind the area of the land required to be excluded from computation. The area covered by the construction made prior to 17th February 1976 is required to be excluded. If there is proposed construction under the expansion scheme the same is also required to be excluded. In case of industry, the area equivalent to the area covered by construction of the building has to be excluded. To put it in different words, in all double the area of the construction is required to be excluded. Over and above such exclusion, appurtenant land and additional appurtenant land are required to be excluded while determining the ceiling limit and finding out whether in fact the land is in excess of ceiling limits.

5. No doubt, the Industries Commissioner has considered the area under construction, but there is discrepancy in that regard. According to the petitioner, the area covered by the construction of the factory premises is 34895.69 sq.mts., while the authority has taken into account 33349 sq.mts. of land. It seems in the factory premises, certain residential blocks are erected covering 1308.52 sq.mts. Nothing clearly appears whether that area has been considered and excluded. There are internal roads too covering the area of 2371.48 sq.mts., which according to the petitioner is not considered. After the Industries Commissioner disposed of the application, the Government of Gujarat issued a G.R. indicating how the computation under the Act should be made and what factors should be borne in mind. As per that G.R., over and above the land covered by the construction, the land, on which no construction is permitted because of the building rules framed by the local body, is also required to be ignored for the purpose of computation of ceiling limitation. The Jamnagar Municipality has as submitted

framed the building rules requiring the citizen to construct within certain area of the land keeping rest of the land open to sky. This aspect is now required to be considered.

6. The Industries Commissioner did not exclude 11683 sq.meters of land but added to the total area holding that the said land was covered by unauthorised construction. If the construction is found unauthorised after making inquiry, the land has to be taken into account while computing the ceiling limits treating the same to be the open one. If the construction is unauthorised, the concerned authority may resort to the measures available in law and exercise his powers. But the area of the land covered by unauthorised construction cannot again be added to the total area of the holdings. To do so would amount to unjust addition of the area again which is once for the purpose of determining total holdings is already taken into account; and thereby not only injustice is caused to the person, but the authority puts himself on the wrong track, and draws wrong conclusion. In this case, about the total area of the property, a fresh computation is required, and mistake found if any will have to be rectified. In view of the abovestated circumstances, the impugned orders being inconsistent with the provisions of the Act and principles of natural justice, are required to be quashed and set aside. Each one has submitted about a particular final order, he desires to have it.

7. The duty of the Court is to set at rest the dispute finally, but in this case, it is not possible for me to decide the matter finally and bring an end to the matter because above stated questions of fact are required to be dealt with and this Court will not deal with the questions of fact which can well be dealt with by the concerned authority. The case in view of the matter is required to be referred back for correct calculation under the Act for the purpose of determining whether the petitioner is holding the land in excess of the ceiling limit and whether the petitioner is entitled to necessary exemption he is praying for, taking into account of the factors not considered.

8. In the result, the petition is allowed. The order of the Industries Commissioner dated 28th February 1984 produced at Annexure 'A' and the order dated 31st July 1984 passed by the Secretary, Revenue Department, produced at Annexure 'B', are hereby quashed and set aside, and the matter is referred back to the Industries Commissioner at Ahmedabad for a fresh consideration of the application dated 24th August 1984. No costs in the circumstances of the case. Rule made absolute.

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